

ASSEMBLY BILL NO. 373—ASSEMBLYMEN GORELOW,
NGUYEN; ANDERSON AND TAYLOR

MARCH 22, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to deceptive trade practices directed toward elderly persons. (BDR 52-773)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to deceptive trade practices; increasing civil and criminal penalties for engaging in a deceptive trade practice directed toward an elderly person; revising the statute of limitations for engaging in a deceptive trade practice; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law defines activities that constitute deceptive trade practices and provides for the imposition of civil and criminal penalties against persons who engage in deceptive trade practices. (Chapter 598 of NRS) Existing law authorizes a court or the Director of the Department of Business and Industry or his or her designee, in certain actions and proceedings relating to the enforcement of the provisions prohibiting deceptive trade practices, to impose an additional maximum civil penalty of \$12,500 for each violation if the court or the Director or his or her designee finds that a person has engaged in a deceptive trade practice directed toward an elderly person or a person with a disability. (NRS 598.0973) **Section 1** of this bill increases the additional maximum civil penalty to \$25,000 if the deceptive trade practice was directed toward an elderly person.

Existing law establishes a tier of criminal penalties for engaging in a deceptive trade practice that is based on the value of the property or services involved in the offense and which, in general, mirror the criminal penalties for theft. (NRS 205.0835, 598.0999) **Section 2** of this bill establishes a tier of criminal penalties for engaging in a deceptive trade practice directed toward an elderly person which are more severe than the criminal penalties applicable for engaging in a deceptive trade practice in general. Under **section 2**, a person who knowingly and willfully engages



in a deceptive trade practice directed toward an elderly person is guilty of: (1) a category C felony for an offense involving a loss of property or services valued at \$1,200 or more but less than \$5,000; (2) a category B felony punishable by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and by a fine of not more than \$10,000, for an offense involving a loss of property or services valued at \$5,000 or more but less than \$25,000; (3) a category B felony punishable by imprisonment in the state prison for a minimum term of not less than 3 years and a maximum term of not more than 15 years, and by a fine of not more than \$15,000, for an offense involving a loss of property or services valued at \$25,000 or more but less than \$100,000; (4) a category B felony punishable by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years, and by a fine of not more than \$20,000, for an offense involving a loss of property or services valued at \$100,000 or more; and (5) a gross misdemeanor for any other offense.

Existing law requires an indictment for the offense of engaging in certain trade practices punishable as a felony to be found, or an information or complaint to be filed, within 4 years after the commission of the offense. (NRS 171.085) **Section 3** of this bill imposes that requirement for all offenses involving the commission of any deceptive trade practice that is punishable as a felony. **Section 4** of this bill clarifies that the amendatory provisions of **section 3** apply to an offense committed: (1) before July 1, 2023, if the applicable statute of limitations has commenced but has not yet expired; and (2) on or after July 1, 2023.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 598.0973 is hereby amended to read as follows:

598.0973 1. Except as otherwise provided in NRS 598.0974, in any action or proceeding brought pursuant to NRS 598.0903 to 598.0999, inclusive, if the court or the Director or his or her designee finds that a person has engaged in a deceptive trade practice directed toward an elderly person or a person with a disability, the court or the Director or his or her designee may, in addition to any other civil or criminal penalty, impose a civil penalty of :

(a) For a deceptive trade practice directed toward a person with a disability, not more than \$12,500 for each violation.

(b) For a deceptive trade practice directed toward an elderly person, not more than \$25,000 for each violation.

2. In determining whether to impose a civil penalty pursuant to subsection 1, the court or the Director or his or her designee shall consider whether:

(a) The conduct of the person was in disregard of the rights of the elderly person or person with a disability;



(b) The person knew or should have known that his or her conduct was directed toward an elderly person or a person with a disability;

(c) The elderly person or person with a disability was more vulnerable to the conduct of the person because of the age, health, infirmity, impaired understanding, restricted mobility or disability of the elderly person or person with a disability;

(d) The conduct of the person caused the elderly person or person with a disability to suffer actual and substantial physical, emotional or economic damage;

(e) The conduct of the person caused the elderly person or person with a disability to suffer:

(1) Mental or emotional anguish;

(2) The loss of the primary residence of the elderly person or person with a disability;

(3) The loss of the principal employment or source of income of the elderly person or person with a disability;

(4) The loss of money received from a pension, retirement plan or governmental program;

(5) The loss of property that had been set aside for retirement or for personal or family care and maintenance;

(6) The loss of assets which are essential to the health and welfare of the elderly person or person with a disability; or

(7) Any other interference with the economic well-being of the elderly person or person with a disability, including the encumbrance of his or her primary residence or principal source of income; or

(f) Any other factors that the court or the Director or his or her designee deems to be appropriate.

Sec. 2. NRS 598.0999 is hereby amended to read as follows:

598.0999 1. Except as otherwise provided in NRS 598.0974, a person who violates a court order or injunction issued pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, upon a complaint brought by the Commissioner, the Director, the district attorney of any county of this State or the Attorney General shall forfeit and pay to the State General Fund a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing the order or injunction retains jurisdiction over the action or proceeding. Such civil penalties are in addition to any other penalty or remedy available for the enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive.

2. Except as otherwise provided in NRS 598.0974, in any action brought pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, if the court finds that a person has willfully engaged in a deceptive trade practice, the Commissioner, the



Director, the district attorney of any county in this State or the Attorney General bringing the action may recover a civil penalty not to exceed \$5,000 for each violation. The court in any such action may, in addition to any other relief or reimbursement, award reasonable attorney's fees and costs.

3. ~~[A]~~ *Except as otherwise provided in subsection 4, a natural person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice:*

(a) For an offense involving a loss of property or services valued at \$1,200 or more but less than \$5,000, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(b) For an offense involving a loss of property or services valued at \$5,000 or more but less than \$25,000, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(c) For an offense involving a loss of property or services valued at \$25,000 or more but less than \$100,000, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and by a fine of not more than \$10,000.

(d) For an offense involving a loss of property or services valued at \$100,000 or more, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years, and by a fine of not more than \$15,000.

(e) For any offense other than an offense described in paragraphs (a) to (d), inclusive, is guilty of a misdemeanor.

➤ The court may require the natural person, firm, or officer or managing agent of the corporation or association to pay to the aggrieved party damages on all profits derived from the knowing and willful engagement in a deceptive trade practice and treble damages on all damages suffered by reason of the deceptive trade practice.

4. *A natural person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice directed toward an elderly person:*

(a) *For an offense involving a loss of property or services valued at \$1,200 or more but less than \$5,000, is guilty of a category C felony and shall be punished as provided in NRS 193.130.*

(b) *For an offense involving a loss of property or services valued at \$5,000 or more but less than \$25,000, is guilty of a category B felony and shall be punished by imprisonment in the*



1 state prison for a minimum term of not less than 1 year and a
2 maximum term of not more than 10 years, and by a fine of not
3 more than \$10,000.

4 (c) For an offense involving a loss of property or services
5 valued at \$25,000 or more but less than \$100,000, is guilty of a
6 category B felony and shall be punished by imprisonment in the
7 state prison for a minimum term of not less than 3 years and a
8 maximum term of not more than 15 years, and by a fine of not
9 more than \$15,000.

10 (d) For an offense involving a loss of property or services
11 valued at \$100,000 or more, is guilty of a category B felony and
12 shall be punished by imprisonment in the state prison for a
13 minimum term of not less than 5 years and a maximum term of
14 not more than 20 years, and by a fine of not more than \$20,000.

15 (e) For any offense other than an offense described in
16 paragraphs (a) to (d), inclusive, is guilty of a gross misdemeanor.

17 ➤ The court may require the natural person, firm or officer or
18 managing agent of the corporation or association to pay to the
19 aggrieved party damages on all profits derived from the knowing
20 and willful engagement in a deceptive trade practice and treble
21 damages on all damages suffered by reason of the deceptive trade
22 practice.

23 5. If a person violates any provision of NRS 598.0903 to
24 598.0999, inclusive, 598.100 to 598.2801, inclusive, 598.405 to
25 598.525, inclusive, 598.741 to 598.787, inclusive, 598.840
26 to 598.966, inclusive, or 598.9701 to 598.9718, inclusive, fails to
27 comply with a judgment or order of any court in this State
28 concerning a violation of such a provision, or fails to comply with
29 an assurance of discontinuance or other agreement concerning an
30 alleged violation of such a provision, the Commissioner or the
31 district attorney of any county may bring an action in the name of
32 the State of Nevada seeking:

33 (a) The suspension of the person's privilege to conduct business
34 within this State; or

35 (b) If the defendant is a corporation, dissolution of the
36 corporation.

37 ➤ The court may grant or deny the relief sought or may order other
38 appropriate relief.

39 ~~15.1~~ 6. If a person violates any provision of NRS 228.500 to
40 228.640, inclusive, fails to comply with a judgment or order of any
41 court in this State concerning a violation of such a provision, or fails
42 to comply with an assurance of discontinuance or other agreement
43 concerning an alleged violation of such a provision, the Attorney
44 General may bring an action in the name of the State of Nevada
45 seeking:



(a) The suspension of the person’s privilege to conduct business within this State; or

(b) If the defendant is a corporation, dissolution of the corporation.

➤ The court may grant or deny the relief sought or may order other appropriate relief.

~~16-1~~ 7. In an action brought by the Commissioner or the Attorney General pursuant to subsection ~~14-01~~ 5 ~~1-1~~ or 6, process may be served by an employee of the Consumer Affairs Unit of the Department of Business and Industry or an employee of the Attorney General.

~~17-1~~ 8. As used in this section:

(a) “Property” has the meaning ascribed to it in NRS 193.0225.

(b) “Services” has the meaning ascribed to it in NRS 205.0829.

(c) “Value” means the fair market value of the property or services at the time the deceptive trade practice occurred. The value of a written instrument which does not have a readily ascertainable market value is the greater of the face amount of the instrument less the portion satisfied or the amount of economic loss to the owner of the instrument resulting from the deprivation of the instrument. The trier of fact shall determine the value of all other property whose value is not readily ascertainable, and may, in making that determination, consider all relevant evidence, including evidence of the value of the property to its owner.

Sec. 3. NRS 171.085 is hereby amended to read as follows:

171.085 Except as otherwise provided in NRS 171.080 to 171.084, inclusive, and 171.095, an indictment for:

1. Theft, robbery, burglary, forgery, arson, a violation of NRS 90.570, a violation punishable pursuant to ~~paragraph (c)~~ **paragraphs (a) to (d), inclusive, of subsection 3 or paragraphs (a) to (d), inclusive, of subsection 4** of NRS 598.0999 or a violation of NRS 205.377 must be found, or an information or complaint filed, within 4 years after the commission of the offense.

2. Sexual assault must be found, or an information or complaint filed, within 20 years after the commission of the offense.

3. Sex trafficking must be found, or an information or complaint filed, within 6 years after the commission of the offense.

4. Any felony other than the felonies listed in subsections 1, 2 and 3 must be found, or an information or complaint filed, within 3 years after the commission of the offense.

Sec. 4. The amendatory provisions of section 3 of this act apply to an offense committed:

1. Before July 1, 2023, if the applicable statute of limitations has commenced but has not expired on July 1, 2023.

2. On or after July 1, 2023.



1 **Sec. 5.** This act becomes effective on July 1, 2023.

